IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5203 OF 2004

Yeshwant Shivram Kelkar ...Petitioner

Versus

The President Officer & Anr. ...Respondents

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Mr. Y.S. Kelkar, party-in-person for Petitioner

Mr. M.M. Verma with Mr. P.N. Shastri counsel for Respondent No.2.

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CORAM: B. H. MARLAPALLE, J.

DATED: 4TH MARCH, 2005

P. C.:-

1. Heard Mr. Kelkar, the petitioner, party-in-person and he claims to be aggrieved by the judgment and order dated 5.9.2002 rendered by the Central Government Labour Court No.II at Mumbai in Application No.LC-2/73 of 1999.

2. It appears that the petitioner had approached the Labour Court by filing an application U/Section 33 C(2) of the Industrial Disputes Act, 1947 for recovery of wages amount of Rs.4,47,496/- for the period from 19.11.1998 to 31.3.2003. The Labour Court noticed that the petitioner was terminated from service by order dated 18.11.1998 and the said order

has already been challenged in appropriate proceedings. If that be so, the adjudicating authority while hearing the dispute of illegal termination would consider at the first place whether there is a case made out by the petitioner for granting reinstatement. If the same is in his favour, then it is necessary to consider whether the reinstatement would be with full back-wages or part of it or the back-wages are required to be denied. The adjudicator U/Section 11A of the Industrial Disputes Act, 1947 has the power to mould the relief and consider whether the claim for back-wages could be entertained if at all the order of termination is illegal, improper and unjust. Thus, the claim made for recovery for wages was not tenable as has been rightly held by the Labour Court.

3. The second ground the petitioner raised was regarding the illegality of the settlement dated 11.6.99. He contended in an application filed U/section 33 C(2) of the Industrial Disputes Act,1947 that the said settlement was illegal and therefore, he would entitle to receive the amount of salary even for the period for which he was not in service of the respondent-company. It appears that the settlement came to be signed between the Deputy Manager (Personnel) of M/s. Hindustan Organic Chemical Ltd., District Raigad and the petitioner in the presence of

two witnesses on 11.6.1999 and the petitioner agreed to give up all his claims against the company if he was paid an amount of Rs.5,33,998/-. A copy of the said settlement is filed alongwith the petition at Exh.A and it appears to be a settlement as contemplated U/section 2(p) r.w. Section 18(1) of the Industrial Disputes Act, 1947. The validity or otherwise of such a settlement could not be an issue of adjudication in an application U/section 33 C(2) of the Industrial Disputes Act, the petitioner may have an appropriate forum to raise such a challenge to the settlement somewhere else and not in application U/section 33 C(2) of the Industrial Disputes Act, 1947.

4. Hence, the view taken by the Labour Court in rejecting the application for recovery of wages cannot be faulted with as it is not suffered from any errors apparent on the face of record.

5. The petition is rejected summarily.